



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Cardenas, Hatch, and Hayward

Cc: Loressa Hon, Acting Executive Director
Dave Bainbridge, General Counsel

From: Phillip Ung, Director, Legislation and External Affairs

Subject: Staff Observations and Options - Cal-Access Replacement System Project

Date: May 6, 2019

Introduction

California's online and electronic filing and disclosure system called the California Automated Lobbying And Campaign Contribution and Expenditure Search System (Cal-Access) was originally launched in June of 2000. Prior to the launch of Cal-Access, campaign and lobbying forms and reports were filed exclusively in paper format. The system's operations and maintenance is the responsibility of the Secretary of State.

Since its launch in 2000, the Cal-Access system has remained substantially unchanged for nearly 19 years while also registering thousands of committees and accepting tens of thousands of campaign and lobbying reports annually. During that period, the system has suffered outages and crashes. The most notable system crash was in winter of 2011 when the system was down for nearly a month.

In 2015, with the support of the Fair Political Practices Commission, Secretary of State Alex Padilla sponsored [Senate Bill 1349 \(2016\)](#) amending Chapter 4.6 of the Political Reform Act to require the Secretary to develop the Cal-Access Replacements System (CARS).

Senate Bill 1349 required the Secretary meet specific deadlines. In Section 84602(b)(4), the Secretary is required to launch CARS no later than February 1, 2019 with the option of extending the launch date to December 31, 2019. If the Secretary chose to extend the implementation date to December 2019, he could only do so after consulting with the respective Senate and Assembly Elections Committees and provide a report explaining the need for the extension and include a plan for completion. In a letter sent December 29, 2017, the Secretary exercised his option to extend the deadline. The letter is attached to this memorandum.

Various provisions of SB 1349 require the Secretary to consult with and provide information to the Commission during the CARS Project.¹ To date, Commission staff believes the Secretary's

¹ Government Code Section 84602(b)(1): To implement the Legislature's intent, as described in Section 84601, the Secretary of State, *in consultation with the Commission*, shall develop an online filing and disclosure system for use by persons and entities specified in Section 84605 that are required to file statements and reports with the Secretary

office has made good faith efforts to keep the Commission apprised of the system's development, consulted on legal and practical matters, and has regularly invited staff to attend stakeholder meetings.

The Commission staff's engagement in the CARS Project spans several years from informal discussions with the Secretary's office to producing reports and participating in development meetings. In July 2016, the Commission sent to the Secretary of State a 98-page document titled "FPPC's Requirements for Cal-Access Replacement System (CARS)."² The report contained detailed business and functional requirements the CARS system should include for all 37 forms administered by the Commission.

Following the passage of Senate Bill 1349, the Secretary of State sponsored Senate Bill 1239 (2018). SB 1239 generally recasts filing and reporting provisions for campaign and lobbying entities to move Cal-Access and the Secretary of State's operations to paperless filings. SB 1239's provisions will become operative upon certification of CARS.

The following individuals have served or continue to serve as the Commission's liaisons to the CARS Project: Trish Mayer, assistant chief of Legal Division (retired), Deborah Hanephin, manager of Education Unit, Sukhi Brar, supervising attorney in Legal Division, and Phillip Ung, director of Legislation.

of State's office pursuant to Chapter 4 (commencing with Section 84100), Chapter 5 (commencing with Section 85100), and Chapter 6 (commencing with Section 86100).

(b)(2): The Secretary of State shall do all of the following with respect to the online filing and disclosure system developed pursuant to this subdivision: (G) *Provide the Commission* with necessary information to enable it to assist agencies, public officials, and others in complying with and administering this title.

(b)(3): The Secretary of State shall do all of the following with respect to developing the online filing and disclosure system and record format pursuant to this subdivision:

(A) Consult with the Assembly Committee on Elections and Redistricting, the Senate Committee on Elections and Constitutional Amendments, *the Commission*, users, filers, and other stakeholders, as appropriate, about functions of the online filing and disclosure system.

(B) In *consultation with the Commission*, and no later than July 31, 2017, hold at least one public hearing to receive input about developing the online filing and disclosure system and record format.

(b)(7)(A): Before making the system developed pursuant to this subdivision available for public use, the Secretary of State, *in consultation with the Commission*, shall test the system to ensure its functionality and then certify that the system meets all the requirements of this subdivision. The Secretary of State may consult with the Department of Technology as needed to fulfill his or her duties under this paragraph.

(b)(7)(B): After the system developed pursuant to this subdivision is certified, the system described in subdivision (a) shall no longer accept reports and filings, unless otherwise directed by the Secretary of State and *the Commission*. The system described in subdivision (a) shall continue to allow public access to past disclosures unless the Secretary of State migrates that data into the system described in this subdivision. To facilitate data conversion during migration, the Secretary of State may make minor technical modifications or corrections to the migrated data.

² The FPPC's "Requirements for Cal-Access Replacement System CARS" report can be made available upon request.

Statewide Primary Moved to March

California's statewide primary election is traditionally held in June of every even-numbered year. In 2017, Governor Brown signed legislation to move the upcoming 2020 statewide primary to March 3, 2020. The Political Reform Act requires specific activity-based campaign reports to be filed during the period 90 days prior to an election.³ Applying both laws together, the 90-day election period would commence December 4, 2019. The Secretary of State intended to implement and certify CARS on December 31, 2019.

Launching a new campaign filing and disclosure system 27 days into the 90-day "election cycle" period could potentially lead to significant compliance issues as the regulated community, vendors, and Secretary of State adapt to the new system. The Commission may see an increase in inadvertent and unintentional violations of the Act due to new technology and with no fault to the filer who may have made a good faith effort to comply.

The original launch date of February 2019 was intentionally chosen by the Legislature and stakeholders to avoid implementing a new system during an election year or during a filing period. Providing the Secretary the option to delay until December 2019 was also reasonable because the primary election would have been six months later. The Legislature's subsequent action of moving the primary election has upended the Legislature's original intent with CARS.

Concerns from Stakeholders

In March 2019, the Secretary of State's CARS Project management team hosted two stakeholder meetings. Commission staff was invited to provide technical assistance and to listen to stakeholder feedback. The Secretary's staff targeted two audiences for the stakeholder meetings: software vendors who provide services to campaigns and lobbying entities, and good government groups. The Secretary's staff demonstrated some limited functions of the current system but did not go into depth regarding all the functionality. This was partly due to the system still being in development. Additionally, the CARS development vendor showed campaign and lobbying disclosure systems from other states that the vendor had previously developed.

Stakeholders shared general concerns about the December 31 implementation date. Software vendors who provided services to campaign and lobbyists expressed concern about their ability to update their systems in time to serve customers, identified several compliance issues including missing fields and capabilities, and concerns about outreach and communication.

Shortly after the software vendors' meeting, the California Political Attorney Association (CPAA) and the California Political Treasurers Association (CPTA) sent letters to the Secretary of State and copied the Commission. Both letters raise the same three issues: 1) political attorneys' and political treasurers' viewpoints are different than that of software vendors and good government groups and important voices that should be heard; 2) concern about

³ Government Code Sections 82036, 82036.5, and 85204.

transparency of the project and invitation-only stakeholder meetings; and 3) urges the Secretary of State to delay the launch of the Cal-Access system. The letters are attached to this memorandum.

The CARS project director Christine McKenzie responded to the CPAA and CPTA letter in mid-April pledging to make all dates, times, and electronic access information publicly available to stakeholders. Additionally, Ms. McKenzie plans to conduct project updates and demonstrations with CPAA and CPTA within the next several weeks. At the time of this writing, no meetings have been scheduled. The response letter is attached to this memorandum.

Interests in the Commission's Position

The Secretary of State, legislative policy and budget committees, and other stakeholders have expressed interest in the Commission's position on the status of the CARS Project, the potential for a December 31, 2019 implementation during the mandatory 24-hour reporting period, and the possibility of delaying the implementation until post-election 2020.

In addition, the Secretary of State has asked the Commission the joint author a letter addressed to the Senate Pro Tempore Toni Atkins and Assembly Speaker Anthony Rendon requesting urgency legislation extending the CARS implementation date to December 31, 2020.

Commission staff has significant concerns with the current December 31, 2019 statutory deadline. Implementing and certifying the CARS Project during the 90-day "election cycle" could cause significant public confusion, inadvertent non-compliance, insufficient time for filers to understand the new system, and require additional commission resources on providing tutorial on the new system that could otherwise be used on campaign compliance issues. If a new deadline is established in statute, staff recommends February 2021 because it would wholly avoid the 2020 elections and is immediately after the last filing period. The Legislature used the same rationale when it established the replacement system's original deadline of February 2019.

Options for the Commission

The Commission can respond in many ways to the current condition of the CARS Project. Staff has provided options for the Commission to discuss, but the Commission is not limited to the options below. Generally, staff believes delaying the CARS implementation until after the 2020 elections is reasonable under the current circumstances.

Option 1:

The Commission may delegate authority to the Chair and Executive Director to work with the Secretary of State to author a joint letter to the Legislature requesting urgent or budget-related legislation to delay the implementation of the CARS project. This option includes supporting any legislation created in response to the letter.

Alternatively, the Commission may author its own letter to the Legislature requesting urgent or budget-related legislation to delay the CARS Project.

Option 2:

The Commission does not author a letter to the Legislature, but the Commission adopts a “support” position on legislation or efforts to delay the implementation of the CARS Project. Under this option, staff would be authorized to work with the Secretary of State, the Legislature, and stakeholders on legislation not yet introduced.

Option 3:

The Commission does not adopt a position on any future legislation nor produce any communication to the Legislature but continues to provide technical assistance to the Secretary of State and the Legislature on the CARS Project.



ALEX PADILLA | SECRETARY OF STATE | STATE OF CALIFORNIA
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April 15, 2019

Ashlee Titus
Director at Large
California Political Attorneys Association
c/o Bell, McAndrews & Hiltachk, LLP
455 Capitol mall, Suite 600
Sacramento, CA 95814

Dear Ms. Titus:

Thank you for your interest in the CAL-ACCESS Replacement System (CARS) project.

CARS project information is available on the CARS project website, where visitors may view News and Updates, Frequently Asked Questions (FAQs) and the Project Reference Library. Interested individuals can also visit the website to subscribe to electronic project updates via email. Finally, our CARS project email address, PRDCARS@sos.ca.gov, is available to anyone with specific questions or input about the project.

The CARS Project Team also conducts topic-specific meetings for stakeholder groups that are intended to address very specific CARS concerns, such as third-party software development for electronic file upload. Such meetings are arranged in consideration of topic, project schedule and facility availability/capacity, but have not been intended to be exclusive. Moving forward, the dates, times, and electronic access information for topic-specific meetings with stakeholders will be made available via the CARS project website and electronic update subscription.

The CARS Project Team is planning to conduct topic-specific project updates and software demonstration meetings with CARS project stakeholders such as the California Political Attorneys Association (CPAA) and the California Political Treasurers Association (CPTA) within the next several weeks. Details regarding the date, location, and remote access to meetings will be communicated as they become available. In the meantime, we encourage stakeholders to submit their questions about the project status to PRDCARS@sos.ca.gov.

Sincerely,

Christine McKenzie

Project Director
CAL-ACCESS Replacement System Project

PRDCARS@sos.ca.gov

<https://www.sos.ca.gov/campaign-lobbying/cal-access-replacement-system-project-cars-updates/>

cc: **Fair Political Practices Commission (FPPC)**
Assemblymember Marc Berman, Chair, Assembly Committee on Elections and Redistricting
Senator Thomas J. Umberg, Chair, Senate Committee on Elections and Constitutional Amendments
California Political Treasurers Association (CPTA)



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March 29, 2019

VIA ELECTRONIC MAIL

Christine McKenzie
Project Director, CAL-ACCESS Replacement System Project
Secretary of State Project Management Office
1500 11th Street
Sacramento, CA 95814
PRDCARS@sos.ca.gov

Dear Ms. McKenzie:

The California Political Attorneys Association (“CPAA”) is a membership organization of attorneys whose practice includes compliance with campaign finance and lobbying disclosure laws in California. Many of our members provide professional services to the regulated community that includes preparing and filing disclosure forms with the Secretary of State’s office. Accordingly, many members of CPAA have attended and participated in the several meetings held to date on the progress of developing the CAL-ACCESS Replacement System (“CARS”), have signed in and provided email addresses at those in-person meetings, and have signed up on the Secretary of State’s web form to receive CARS Project-related notices. However, two meetings were held this week for which most of our members received no direct notice from the Secretary of State. This is troubling for a number of reasons.

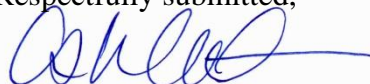
First, Government Code section 84602(b)(3)(A) states that the Secretary of State, with respect to development of the CARS system, shall: “Consult with the Assembly Committee on Elections and Redistricting, the Senate Committee on Elections and Constitutional Amendments, the Commission, *users, filers, and other stakeholders*, as appropriate, about functions of the online filing and disclosure system (emphasis added).” You have reiterated the need to “work cooperatively” on this project and to consider the “best options for the State of California.” CPAA members are an important part of the filing community, and because we are attorneys with an in-depth understanding of the law and practical experience completing and filing reports, we have a viewpoint that is different than that of the software vendors and the “good government” groups. Furthermore, many CPAA members serve as treasurers and assistant treasurers, and thus are potentially subject to liability in the form of fines and FPPC enforcement actions. Based on our decades of experience in preparing and filing campaign finance and lobbying reports, our input must be taken into consideration as CARS is developed.

Second, it is worrisome the invitations for the CARS meetings appear to be directed to specific groups of people, categorized presumably by staff of the Secretary of State, and not extended to everyone who has asked to be notified of CARS Project events, nor posted on the Secretary of State's website. The flyer for the March 26th meeting indicated it was for "Good Government" groups. The March 28th meeting was specifically for "Electronic Filing Software Vendors and Service Providers." These two meetings presented very different information and had very different tones. The stakeholders should not be segregated from each other as these meetings occur. We do not take issue with scheduling topic-specific meetings, but meetings should not be invitation-only events for particular stakeholders, to the exclusion of other stakeholders. All stakeholders should be given advance notice of all meetings held for the duration of the CARS Project, and each stakeholder should decide for herself or himself which meeting to attend. Given that this entire project is intended to improve public disclosure, the process of developing it should likewise be fully transparent and open to participation from the ultimate users of the system.

Third, we continue to have significant concerns with the timeline of the CARS Project. This concern is heightened with each passing meeting, as it is clear the Project developers still have a lot to learn about the nuances of California law the new system must incorporate. We understand the Legislature, in Government Code section 84602(b)(4), imposed a deadline of December 31, 2019 for CARS to replace Cal-Access. However, considering that the Legislature subsequently moved California's primary election to March 2020 (24 hour reporting for that election begins December 4, 2019), and in light of the numerous unsolved technical and substantive issues that continue to be raised by stakeholders, the Secretary of State should take the lead in seeking a delay from the Legislature.

The legislation directing the Secretary of State to replace Cal-Access mandates that the new system enable filers to comply with all of the disclosure requirements of the Political Reform Act. CPAA members have valid concerns that at the present stage of development, the CARS Project is falling far short of this base-level requirement and will not be ready for users by December 2019. CPAA's participation in this project is essential to the Secretary of State's ability to comply with its statutory obligations, which includes consulting with users, filers, and other stakeholders. Please update your distributions list(s) to ensure that every person who has signed up to be kept informed of the progress of the CARS Project will receive each and every notice of each and every meeting, milestone, event, or other announcement regarding the CARS Project, until it is fully implemented.

Respectfully submitted,



Ashlee Titus, Director at Large

on behalf of the California Political Attorneys Association (CPAA)

cc: Fair Political Practices Commission
Assemblymember Marc Berman, Chair, Assembly Committee on Elections and Redistricting
Senator Thomas J. Umberg, Chair, Senate Committee on Elections and Constitutional Amendments
California Political Treasurers Association (CPTA)



April 19, 2019

VIA ELECTRONIC MAIL

Christine McKenzie
Project Director, CAL-ACCESS Replacement System Project
Secretary of State Project Management Office
1500 11th Street
Sacramento, CA 95814
PRDCARS@sos.ca.gov

Dear Ms. McKenzie,

We are the Board of the California Political Treasurers Association. Our organization represents nearly one hundred professional treasurers. Our members' years of experience with California campaign finance and lobbying disclosure compliance ranges from several years to several decades. Our members are sole proprietors or partnerships or employees of California's most prestigious and respected campaign finance and election law firms. In addition, our members electronically file more than 50% of all Secretary of State filings, and more likely, close to 75% of the CAL-ACCESS filings.

We have been looking forward to the design and implementation of the CAL-ACCESS Replacement System Project with the added benefit of the elimination of filing paper reports. In November 2018 we provided Julie Waddell, Chief of the Political Reform Division, with a list of our members and email addresses so that we could be included in all your communications regarding the status of the project. However, communications have not been forthcoming.

We have been disappointed to learn that you have segregated your communications and meetings by your perceived assumptions of a person's interest in this project. Vendors only are invited to some meetings. Good government advocates are invited to other meetings. And the general public has only been invited to one or two meetings. In the interests of the success of this project, and of government transparency, we urge you to open all meetings to all interested persons so that we all know the status of the project in real time. Certainly each meeting would have a specific agenda and if an area of discussion is not of particular importance to one group or another then those interested persons could choose to attend or not.

We have also been disappointed, and dismayed, that you have disregarded the expertise and experience of the treasurer community and have rejected our members' attempts to engage with this project.

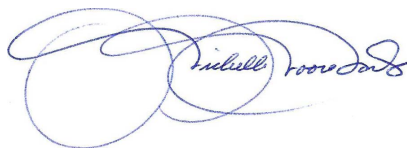
Additionally, we are concerned about the timing of the launch of the new system. Granted, the initial launch date of December 2019 was enacted prior to the implementation of the March 2020 Primary Election. However, the new reality of the December launch will require transitioning from one system to another, unknown, un-designed and untested system, at the onset of an election cycle. We encourage you to rethink this timing and request the Legislature authorize a revised, more practical launch date.

Again, we look forward to the successful completion of this project and anticipate that the Office of the Secretary of State will engage in a more open and cooperative process throughout.

Sincerely,



David Gould
Gould & Orellana LLC



Michelle Sanders Moore
Political Reporting Plus



Sheila Scally
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Nancy Haley
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Mary Nunes
Bell, McAndrews & Hiltachk



Laura Stephen
Stephen Company

cc: Fair Political Practices Commission
California Political Attorneys Association
Assemblymember Marc Berman, Chair, Assembly Committee on Elections and Redistricting
Senator Thomas Umberg, Chair, Senate Committee of Elections and Constitutional Amendments

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